# INDEX



## CITATIONS





684383—46——1

# In the Supreme Court of the United States

October Term, 1945

---

No. 798

Harold M. Steiner, petitioner

*v.*

United States of America

---

No. 799

Jonas A. Miller, petitioner

*v.*

United States of America

---

*ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

---

## BRIEF FOR THE UNITED STATES IN OPPOSITION

---

### OPINION BELOW

The appeals in these cases were heard together and were disposed of in one opinion in the circuit court of appeals (No. 798, R. 212–219; No. 799, R. 188–195), which is not yet reported.

### JURISDICTION

The judgments of the circuit court of appeals were entered December 18, 1945 (No. 798, R. 220;

No. 799, R. 196), and petitions for rehearing were denied January 8, 1946 (No. 798, R. 221; No. 799, R. 197). The petitions for writs of certiorari were filed February 4, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

## QUESTION PRESENTED

The question presented is, in substance, whether the transactions in which petitioners engaged were sales or leases of farm equipment.

A subsidiary question is whether the trial judge erred in instructing the jury in each case that if they found that sales of the items in question took place, the "Lease of Equipment" contracts which petitioners used in auctioning farm machinery were not to be treated as leases, but rather as contracts of sale.

## STATUTE AND REGULATION INVOLVED

The Emergency Price Control Act of 1942, 56 Stat. 23, as amended, 58 Stat. 632 (50 U. S. C. App., Supp. IV, 901 *et seq.*), provides in pertinent part:

> Sec. 2 (a). Whenever in the judgment of the Price Administrator * * * the price or prices of a commodity or commodities have risen or threaten to rise to an extent or in a manner inconsistent with the

purposes of this Act, he may by regulation or order establish such maximum price or maximum prices as in his judgment will be generally fair and equitable and effectuate the purposes of this Act. * * *

SEC. 4 (a). It shall be unlawful * * * for any person to sell or deliver any commodity, * * * in violation of any regulation or order under section 2 * * *.

SEC. 205 (b). Any person who willfully violates any provision of section 4 of this Act * * * shall, upon conviction thereof, be subject to a fine of not more than $5,000, or to imprisonment for not more than two years in the case of a violation of section 4 (c) [relating to the disclosure or use for personal benefit of official information by government officers] and for not more than one year in all other cases, or to both such fine and imprisonment.

Maximum Price Regulation No. 133 (7 F. R. 3185), issued by the Price Administrator on April 28, 1942, provided in pertinent part as of the date of the offenses involved here:

SEC. 1361.1. Prohibition against sales at higher than maximum prices.

(a) On and after May 11, 1942, regardless of any contract, agreement, lease or other obligation:

(1) No person shall sell, deliver or negotiate the sale of any farm equipment at a price higher than the maximum fixed by this regulation;

(2) No person in the course of trade or business shall buy or receive any farm equipment at a price higher than the maximum fixed by this regulation; and

(3) No person shall agree, offer, solicit or attempt to do any of the foregoing.

* * * * *

SEC. 1361.3a. Maximum prices for used equipment—(a) *Applicability of this section.* This section is applicable to sales by all persons of the following items of used farm equipment:

(1) Combines.

(2) Corn binders.

(3) Corn pickers.

(4) Farm tractors and garden tractors (except truck-type tractors for which maximum prices are established by Maximum Price Regulation 136, as amended).

(5) Hay balers (motor or tractor operated).

(6) Hay loaders.

(7) Manure spreaders.

(8) Side delivery rakes.

(9) Tractor mounted mowers, including semi-mounted (power take-off driven) mowers.

(10) A combination of any of the items just listed with other items of farm equipment specifically designed for mounting thereon, where the combination is sold as a unit.

This section is also applicable to the sale of any complete item of farm equip-

ment which has been purchased or acquired by the seller for resale. This regulation is not applicable to sales of used farm equipment parts.

(b) *Maximum prices for sales by farmers, auctioneers, etc.*—The maximum price for the sale of any item listed in subparagraphs (1) to (9), inclusive, of this paragraph (a), which has been purchased or acquired by the seller for his own use and not for resale, shall be determined as follows: If the item is sold within one year after sale new, the maximum price shall be 85% of the "base price." In any other case, the maximum price shall be 70% of the "base price." In the case of a combination sale referred to in paragraph (a) (9), the maximum price for the combination shall be equal to the sum of the maximum prices of each of the items of farm equipment sold as a part of the combination. These maximum prices shall be determined in the manner just set forth.

(1) *Base price.*—The "base price" which must be used in determining maximum prices shall be the first of the following which is available:

(i) The manufacturer's current suggested retail price for the item * * *.

(ii) The last suggested retail price for the item that the manufacturer issued.

(iii) If the item never had a suggested retail price, the base price is the maximum price for which the same or nearest equiva-

> lent item would be sold new in the locality, minus carload freight from the plant of the manufacturer of the item.
>
> * * * * *

STATEMENT

Indictments were returned in the United States District Court for the Northern District of Indiana against petitioner Steiner in seventeen counts and against petitioner Miller in twelve counts, charging violations of the Emergency Price Control Act (No. 798, R. 1–14; No. 799, R. 1–10). Each count of the indictments charged that on a specified date the defendant, acting as an auctioneer at a public sale, wilfully sold a described item of farm machinery or equipment at a specified price which was substantially in excess of the ceiling price prescribed by Maximum Price Regulation No. 133. Petitioner Steiner was convicted after a jury trial on all except two counts (No. 798, R. 182), and he was sentenced to imprisonment for one year on each of counts 1, 2, 3, 4, 6, 7, 9, and 10, the sentences to run concurrently, and for six months on each of the remaining counts, the sentences to run concurrently as between themselves but consecutively to the sentences on the other counts; he was also fined $200 on each count (No. 798, R. 188–190). Petitioner Miller was convicted by a jury on all counts (No. 799, R. 158), and he was sentenced to imprisonment for one year on each of the first eleven

counts, the sentences to run concurrently, and to imprisonment for one day on count 12, to be served consecutively to the sentences on the other counts; he was also fined $250 on each count (No. 799, R. 196).

Upon appeals which were heard together and disposed of in a single opinion, the judgments were affirmed by the Circuit Court of Appeals for the Seventh Circuit (No. 798, R. 220; No. 799, R. 196).

There was no dispute at either trial that each of the items of farm equipment and machinery specified in the indictments was transferred at an auction sale at a total price substantially in excess of the price ceiling established by Maximum Price Regulation No. 133. The sole disputed question was whether petitioners had sold the items, as the Government claimed, or whether they had leased them for a rental which is not regulated by the Maximum Price Regulation, as petitioners claimed, and, in substance, it is this question which petitioners raise in this Court. (See No. 798, R. 214-215.) While petitioners had separate jury trials, the pattern of the evidence showing the transactions charged in each indictment is the same. The evidence, directed to the issue which petitioners raise, may be briefly summarized as follows:

For a number of years petitioners have conducted auctions at farm sales in Indiana (No.

684383—46——2

798, R. 106–107; No. 799, R. 110). When a farmer desires to dispose of his farm machinery and equipment and other assets by auction, he customarily announces publicly through a "sale-bill," which is distributed in the locality, that his property will be sold at auction under the auspices of named auctioneer (See, e. g., No. 799, R. 49–51, 91; see also pp. 23, 40).[1] Until January

[1] For example, Government Exhibit No. 22 in the *Miller* case, a "sale-bill," states (No. 799, R. 91):

"Public Sale.

"As I am quitting farming I will sell at Public Auction at my farm located 4½ miles southwest of Wakarusa or 1 mile north and ½ mile east of Oak Grove., on Wed., August 9, sale to begin at 1:00 P. M.

8 Guernsey Cattle: 4-yr. old cow bred July 10; 6-yr. old cow bred June 22; 6 yr. old cow bred May 28; heifer coming in with 2d calf Oct. 24; 3-yr. old cow bred June 21; Guernsey cow bred June 3; yearling heifer; 18-mo. old herd bull.

10 Head Hogs—brood sow; 9 shoats weighing about 50 pounds.

"Farming Implements.

"Model B. J. Deere tractor on rubber, in good condition; 2-bottom 12-in. J. Deere tractor cultivator; Model B. Internat. hammer mill, a good one; J. Deere corn binder; Superior grain and fertilizer drill; Dunham Culti-hoe; rubber tired wagon; side delivery rake; International manure spreader; 5-ft. mower; double disc; 3-sec. spring harrow; Black Hawk corn planter; horse drawn corn cultivator; Syracuse walking plow; J. Deere riding plow; weeder; dump rake; 1000 lb. barn scales; No. 3 Int. cream separator; 1½ gas engine; 2 McComb oil brooder stoves, 1 nearly new; 12x12 brooder house, nearly new; vice; anvil; log chains; forks tank heater; 6-volt wind charger; lawn mower; milk cans; and many other articles.

"Good Kalamazoo Kitchen Range.

"Lloyd W. Null, "Dale Yoder, Clerk.
"Jonas A. Miller, Auct."

1943, it was petitioners' customary practice to sell each item to the highest bidder at the auction. At that time both petitioners were advised by representatives of the Office of Price Administration that Maximum Price Regulation No. 133, fixing price ceilings for the sale of new and used farm machinery, applied to sales at auction. (No. 798, R. 107–111; No. 799, R. 111, 118.) As a result, petitioners revised their practices at the auctions. The "sale-bills" were distributed as before, and the items offered were sold to the highest bidder, unless the item was one which was subject to a price ceiling. In the latter situation, when the bidding reached the ceiling price, and, on some occasions, at an earlier point, petitioners would announce to the bidders that they would "sell a lease" of the item which had been offered for sale, and the so-called "lease" was then sold to the highest bidder. The bidding in these circumstances was in terms of a yearly rental, and the "leases" were for a term of ten years. (No. 798, R. 75, 91–92, 112–116, 118, 121–122; No. 799, R. 22–23, 30, 34–35, 76, 112–113, 117, 118, 119, 123–124.) The highest bidder was required to sign an agreement labelled "Lease of Equipment" (*infra,* pp. 10–13), and to pay at the time of the transaction a sum equal to the "rental" for ten years (No. 798, R. 22, 36, 45–46, 47, 50, 52, 56, 60, 123, 125; No. 799, R. 26, 30, 31, 37, 39, 116). The leases were furnished by pe-

titioners (No. 798, R. 119-120, 122, 123, 124, 130; No. 799, R. 113, 118).

Petitioner Miller told one "lessee" who had been summoned to appear before the grand jury, "The dumber you can act, the better you are off. Don't take these leases to court; don't show them to nobody" (No. 799, R. 59, 62). On another occasion he remarked (No. 799, R. 79), "No one pays any attention to ceiling prices." Petitioner Steiner admitted that on occasion he told the bidders that it made no difference what the duration of the lease was, whether it ran for ten, twenty, or thirty years (No. 798, R. 90, 97, 100, 117, 125-126). At one sale when reference was made to the ten year lease device, petitioner Steiner remarked, "In ten years this man may die, and the one that purchases the tractor may die, and anything may happen. The war will be over by then, and there won't be any OPA; and if I have anything to do with it, there won't be any OPA" (No. 798, R. 96, 128-129).

The "lease" which was executed in each transaction contained the same provisions, except for differences in names, amounts, and descriptions of the items involved. A sample of an executed lease provides as follows (No. 799, R. 80-81):

> Lease of Equipment
>
> The undersigned Harold Buzzard, hereinafter designated as "the lessor" has let unto the undersigned Mervin Wagner, hereinafter designated "the lessee" the

following agricultural tools, machinery and equipment:

1. The term of this lease is 10 years at an annual rental of *One Hundred twenty-two*[3] dollars, a total rental of *Twelve Hundred Twenty Dollars.* Of this amount the lessee has paid to the lessor *Twelve Hundred Twenty Dollars,* to leave a balance of *no/100 Dollars* owing on the rental for the remainder of the term. This balance shall be paid to the lessor in equal annual installments at the annual rate aforesaid, in advance, the first payment on this balance to be made on that anniversary date of this lease constituting the end of the period for which the advance rental payment has been this day paid to the lessor. If the lessee shall fail to pay the same when so due, the lessor shall resort to the deposit described in the next succeeding paragraph of this lease and draw thereon for the rental so falling due, and from year to year thereafter (in event of such continued non-payment) until the expiration of this lease.

2. The lessee has deposited with the lessor the sum of *Twelve Hundred Twenty* Dollars as security for the payment of the balance of the rentals herein called for and as security for the return, at the end of the term of this demise, of the chattels aforesaid, in as good a condition as they now are

[3] The contract was a printed form in which the blank spaces were filled in at the time of the transaction; we have italicized the information filled in.

in, in full repair and state of efficiency operability. The lessee undertakes, unconditionally and without exceptions, for himself, successors and assigns, the return of the chattels to the lessor in the condition aforesaid at the end of the demise. Provided However, in no event shall the said lessee, his heirs, executors, administrators, assigns and successors be holden to any liability for breach of this covenant or any other provision of this lease in excess of the amount of deposit for security as in this paragraph specified. Provided, Further, However, in event the deposit aforesaid or any part thereof of the advance rental payment or any part thereof is not paid in cash but evidenced by a promissory note or notes accepted by the lessor, nothing herein contained shall operate as any defense to, set off or counterclaim against or furnish any ground for postponement of the maturity date fixed by such note or notes, and such note or notes shall be collectible in accordance with their tenor, wholly apart from and without regard to any limitation of liability on the lessee as herein expressed.

3. The lessee shall list the chattels as his property for taxation and pay and discharge when due any and all taxes and other governmental excises and exactions whatsoever on account of the ownership, operation, or this bailment of the said chattels, and hereby indemnifies and agrees to hold the lessor harmless therefrom.

4. The lessee may assign this lease, or sublet the chattels, but with such assignment shall pass to the assignee's debt account security all deposits made with the lessor, and such assignee shall then, without diminution of obligation, stand in the shoes of the lessee, and likewise every subsequent sublessee and assignee thereof. Should the lessee or his assigns at any time undertake to make disposition of the chattels, the purchaser in good faith shall, notwithstanding any lack of consent on the part of the lessor, take good title thereto as against the lessor, and the lessor shall then be entitled to full appropriation of the deposit for security in like manner as on the destruction of the chattels, and any unearned rentals in the hands of the lessor shall be deemed then fully earned.

5. No guarantees, representations of warranties whatsoever are made by the lessor to the lessee in relation to the chattels hereby let, it being understood that the lessee has examined the same and knows their character and quality.

In both cases the trial judge instructed the jury that if it found "that the owner of the item agreed to or did transfer his interest in the item to a buyer for a price, then I instruct you that the instrument called a 'Lease of Equipment' involved in the transaction is not a lease, but a part of and in effect a written agreement evidencing such sale" (No. 799, R. 146; No. 798, R. 170).

## ARGUMENT

Although couched in different terms, both petitions present, in substance, the same contention. Proceeding on the assumption that the transactions charged in the indictment against him were in fact leases and not sales, petitioner Steiner urges (No. 798, Pet. 2, 17–19) that the trial judge erred in instructing the jury that if the jury found that the chattels were sold, they should regard the "Lease of Equipment" contracts as contracts of sale. Making the same assumption, petitioner Miller urges (No. 799, Pet. 2, 14–15) that he has been convicted of a constructive offense, i. e., for leasing farm equipment at prices in excess of the ceiling prices for the sale of such equipment. The difficulty with petitioners' arguments is that their basic assumption is untenable. Under appropriate instructions, the juries found that they sold, not leased, the equipment at over the ceiling prices, and the court below agreed with these findings, as do we.

Regardless of what petitioners called the agreements, the character of the transactions, of course, must be judged by considering the substance of what occurred and not the mere forms in which they dealt.

Viewed in the light of actuality, there can be no serious question that petitioners were selling the substance of outright ownership, even though they purported to be selling leases. As executed

by the parties, the terms of the "Lease of Equipment" contracts (*supra*, pp. 10–13) make this evident. The so-called "lessee" was required to deposit with the "lessor" a sum equal to the total "rental" provided in the lease. The lease stipulates that the lease shall run for ten years at a specified annual rental and that the lessee has paid to the lessor the total rental for the term of the lease, leaving a balance of "no/100 dollars." If the lessee fails to pay the balance of "no/100 dollars" when due, the lessor is free to resort to the deposit and draw thereon the rental which falls due from year to year thereafter until expiration of the lease. The lessee undertakes to return the chattels at the end of the term "in as good condition as they now are in," but his liability for breach of this covenant shall not be in excess of the total rental price which was deposited with the lessor. The lessee is required to list the chattels as his property for taxation purposes and to pay and discharge all taxes when due. The lessee may assign the lease or sublet the chattels, in which event, the assignee shall "stand in the shoes of the lessee." If the lessee or his assigns dispose of the chattels, the purchaser in good faith shall, notwithstanding any lack of consent on the lessor's part, take good title against the lessor.

As a result of the contract, the transferor of the chattels, in each instance, received at the time of the transaction the total consideration which was

agreed upon by the parties. The transferee, on the other hand, took possession of the property, the power to transfer good title to a bona fide purchaser, the liability for taxes on the property, and the power to do as he saw fit with the property without any further liability to the transferor, for by the terms of the contract in no event could the lessee's liability to the lessor exceed the price which he already had paid him. As the court below concluded (No. 799, R. 192), "It is very unusual to have such provisions in a lease if it is, in fact, a lease."

In construing the contract, the trial judge was, of course, entitled to view it in the context of the circumstances under which it was made on the various occasions charged in the indictments, *Fidelity and Deposit Co.* v. *Pink,* 302 U. S. 224, 229. Those circumstances show that the "lease" plan was that of petitioners and not of the owners of the property, and that, in several instances, the persons for whom petitioners were acting as auctioneers were permanently leaving their farms for other activities and were disposing of all their farm equipment. In at least two instances the farmers were joining the armed forces (No. 798, R. 94; No. 799, R. 17); in another, the farmer was permanently forsaking farming to study for the ministry (No. 799, R. 70, 72; see also, R. 33); another sale was for a widow whose farmer-husband had recently died (No. 798, R. 37-38). These

people, as well as the others, were permanently disposing of their farming equipment with no intention or desire to retain any semblance of dominion over it or a reversionary interest in it. The "sale-bills," which announced the various auctions, were phrased in the terms of outright sales, and it is undisputed that everything not subject to price ceilings was sold without any pretext of a lease. These circumstances serve to buttress what is evident from the plain terms of the contracts. While they purported to allocate interests in the various chattels among the transferors and transferees, the parties contemplated no such result, and the contracts, in fact, transferred every significant feature of complete ownership to the transferee; in our view, in everything except its label, it was a contract of sale, and the trial judge properly so charged the jury.

In the words of the circuit court of appeals (No. 799, R. 193), "A careful examination of the 'lease' and of the evidence leaves no doubt that the transactions were a wilfull attempt upon the part of the defendants to circumvent and evade the law and regulation, that such transactions were outright sales, and not leases, and were in excess of the maximum or ceiling prices as fixed by the law and regulation. There was competent and substantial evidence to support the verdict of the jury."

## CONCLUSION

Petitioners had fair trials in which the evidence abundantly demonstrated that they regularly sold farm equipment and machinery at auction at prices substantially in excess of the ceiling prices fixed by Maximum Price Regulation No. 133. The cases present no conflict of decisions or question of general importance. We therefore respectfully submit that the petitions for writs of certiorari should be denied.

J. Howard McGrath,
*Solicitor General.*
Theron L. Caudle,
*Assistant Attorney General.*
Robert S. Erdahl,
Irving S. Shapiro,
*Attorneys.*

February 1946.

U. S. GOVERNMENT PRINTING OFFICE: 1946